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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,413	08/18/2003	Mark E. Thompson	10020/25502	3438

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EXAMINER

YAMNITZKY, MARIE ROSE

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/643,413

Applicant(s)

THOMPSON ET AL.

Examiner

Marie R. Yamnitzky

Art Unit

1774

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: 2,9,20 and 75 (see "Other" below).
Claim(s) rejected: 1,4,6-8,12-17,19,21-24,26-33,35-39,41-59,61-64,68,70-73,76-80,82,84-88 and 90.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

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Continuation of 5. Applicant's reply has overcome the following rejection(s):

All rejections EXCEPT the provisional obviousness-type double patenting (odp) rejection of claims 1, 4, 6-8, 12-17, 19, 21-24, 26-33, 35-39, 41-59, 61-64, 68, 70-73, 76-80, 82, 84-88 and 90 over claims in Application No. 10/288,785, and a miscellaneous issue noted for some claims that fail to further limit the independent claim from which they directly or ultimately depend.

The examiner notes that the '785 application has been allowed, and the issue fee was paid 12 April 2005. The provisional odp rejection will convert to an odp rejection (non-provisional) when the patent issues.

Regarding the remaining miscellaneous issue, claims 21, 52, 72 and 85 do not further limit the independent claim from which each directly or ultimately depends because, per the independent claims 16, 47 and 68, at least one substituent (at least one of R3 and R5) will be the electron withdrawing group CN. (In the final rejection, the examiner failed to note that this issue applied to claim 72.)

Continuation of 13. Other:

Upon entry of the proposed amendment, claims 2, 9, 20 and 75 will be objected to as dependent upon a rejected base claim, but allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.



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PRIMARY EXAMINER

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